

# MEMORANDUM

January 26, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MARK WEINSTEIN  
Veatch, Carlson & Grogan

JOHANNA M. FONTENOT  
Principal Deputy County Counsel  
General Litigation Division

RE: **Brian Kuo v. City of San Marino et. al**  
**Los Angeles Superior Court Case No. BC 337465**

DATE OF  
INCIDENT: October 20, 2004

AUTHORITY  
REQUESTED: \$24,750

COUNTY  
DEPARTMENT: Department of Public Works

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## CLAIMS BOARD ACTION:

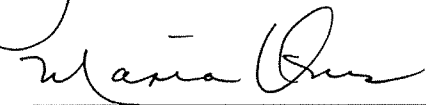
☒ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

  
\_\_\_\_\_, Chief Administrative Office  
**ROCKY ARMFIELD**

  
\_\_\_\_\_, County Counsel  
**JOHN F. KRATTLI**

  
\_\_\_\_\_, Auditor-Controller  
**MARIA M. OMS**

on February 6, 2006

## SUMMARY

This is a recommendation to settle for \$24,750 a lawsuit filed by Brian Kuo, whose real property was damaged by water that flowed into his property because of a defective storm drain.

## LEGAL PRINCIPLES

A public entity is liable under the law of inverse condemnation for damage caused to property, when the damage was caused by a public improvement deliberately designed and constructed by the public entity, whether or not the damage was foreseeable. A prevailing plaintiff in an inverse condemnation action is entitled to an award of reasonable attorneys' fees.

## SUMMARY OF FACTS

On October 20, 2004, a storm drain in the City of San Marino collapsed under the intersection of Mill Lane Road and Mill Canyon Road, causing a sinkhole. The storm drain experienced an increase in pressure, caused by the unusually heavy amount of rainfall. The flooding caused extensive damage to Brian Kuo's rental property, including the pool and garage.

There is a dispute between San Marino and the County as to ownership of the storm drain. Although the County contends it does not own the storm drain at this intersection, the storm drain upstream from this location is owned and maintained by the County. Mr. Kuo filed claims against San Marino and the County.

## DAMAGES

One week prior to the flooding of Mr. Kuo's property, he had entered into a one-year lease with a tenant for \$4,500 a month. As a result of the flooding, Mr. Kuo lost rental income for two months. He was also required to spend money to clean up the mess created by the flooding.

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Clean up Services	\$ 5,000
Damage to property	\$ 40,000
Loss rental income	\$ 9,000
Mold remediation	\$ 5,000
Attorneys' fees	<u>\$ 50,000</u>
Total	\$109,000

The proposed settlement calls for the County and San Marino to each pay Brian Kuo \$24,750, for a total of \$49,500, for all of his claims for damages, costs and attorneys' fees.

## STATUS OF CASE

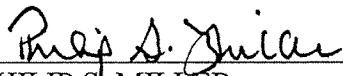
Expenses incurred by the County in defense of this matter are attorneys fees of \$4,113.31 and \$8.10 in costs.

## EVALUATION

This is a case of disputed liability. A jury could find that the design plan for the storm drain that was approved by the County and interlinked into the City's storm drain was defective. If the jury finds that the design plan was defective, the County could be liable for inverse condemnation. A reasonable settlement at this time will save further litigation costs and avoid a verdict which could exceed the proposed settlement.

We join with our third party administrator, Carl Warren and Company, and our private counsel, Veatch, Carlson & Grogan, in recommending a settlement of this matter in the amount of \$24,750. The Department of Public Works concurs in the recommendation.

APPROVED:

  
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PHILIP S. MILLER  
Assistant County Counsel  
General Litigation Division

JMF:bh